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OCT 14 2008

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

CASE NO.: BA6411256

~~PROPOSED~~ ORDER

[Penal Code, § 23]

Date: October 14, 2008
Time: 8:30 a.m.
Place: 210 West Temple Street
Los Angeles, CA 90012
Dept.: 30

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

TAWANA LA TECIA DELCE

Registered Nurse License No. 644512

Defendant.

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer,
BUREAU OF REGISTERED NURSING,
DEPARTMENT OF CONSUMER AFFAIRS,
STATE OF CALIFORNIA,

Applicant.

The court having noted the appearance of Deputy Attorney Rene Judkiewicz, on behalf of the Board of Registered Nursing, Department of Consumer Affairs, and having heard and considered the moving papers, oral and written arguments; and having heard and considered any objections on behalf of Defendant Tawana La Tecia Delce: The Court finds that good cause

1 supports the application of the California Board of Registered Nursing pursuant to Penal Code
2 section 23 and that under the current circumstances it is appropriate to impose reasonable
3 restrictions on defendant in the interest of public health and safety.

4 THE COURT HEREBY ORDERS THAT:

5 1. Defendant Tawana La Tecia Delce is prohibited from engaging, either directly or
6 indirectly, in any activity for which a registered nurse license is required.

7 2. These conditions shall remain in effect until further order by the court, with notice
8 to the California Board of Registered Nursing.

9 DATED: OCT 14 2008



Henry J. Hall
HENRY J. HALL

Hon. Henry J. Hall
Superior Court of California
For the County of Los Angeles

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DOJ Matter ID: LA2008601291

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OCT 14 2008
LOS ANGELES
SUPERIOR COURT

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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11 THE PEOPLE OF THE STATE OF
CALIFORNIA,

12 Plaintiff,

13
14 v.

15
16 TAWANA LA TECIA DELCE

17 Registered Nurse License No. 644512,

18 Defendant.
19

20 RUTH ANN TERRY, M.P.H., R.N.
Executive Officer,
21 BOARD OF REGISTERED NURSING,
DEPARTMENT OF CONSUMER AFFAIRS,
22 STATE OF CALIFORNIA,

23 Applicant.
24

CASE NO.: BA6411256

**APPEARANCE AND
RECOMMENDATION BY STATE
LICENSING AGENCY FOR ORDER,
TO PROHIBIT DEFENDANT FROM
PRACTICE AS REGISTERED
NURSE PENDING CRIMINAL OR
ADMINISTRATIVE PROCEEDINGS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Penal Code, § 23]

Date: October 14, 2008
Time 8:30 a.m.
Place: 210 West Temple Street
Los Angeles, CA 90012
Dept.: 30

25 **TO THE CLERK OF THE ABOVE ENTITLED COURT:**

26 PLEASE TAKE NOTICE that on October 14, 2008, or as soon thereafter as the
27 preliminary hearing may be heard in Department 30 of the above-entitled court, located at 210
28 West Temple Street, Los Angeles, CA 90012, Applicant Ruth Ann Terry, M.P.H., R.N., in her

official capacity as the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs, State of California, will request an opportunity to appear before this court, through counsel, California Attorney General, Edmund G. Brown Jr., by Deputy Attorney General Rene Judkiewicz, under the authority of Penal Code section 23, to recommend that this court issue an Order prohibiting Defendant Delce from practicing as a registered nurse, either directly or indirectly, until resolution of these criminal proceedings, or until resolution of anticipated Board disciplinary action.

Applicant requests this order in the interest of justice, on the ground that the defendant, if allowed to continue to practice as a registered nurse without restriction, poses a danger to the public health and safety. Penal Code section 23 authorizes this court to “take into consideration the protection of the public” when imposing conditions of release and/or probation on a Board-licensed person who has been charged with a crime substantially related to the duties, functions and qualifications of a registered nurse.

This request and appearance is based upon this Notice, Points and Authorities; and the attached Proposed Order; criminal docket; the Board's Disciplinary Guidelines; and such oral and other documentary evidence as may be presented at the hearing on this request.

INTRODUCTION

Defendant TAWANA LA TECIA DELCE (Defendant) is licensed by the Board to practice as a registered nurse in California. She was issued Registered Nurse License No. 644512 on September 8, 2004. The license was in full force and effect at the time of the acts alleged in the criminal complaint, and will expire on March 31, 2010, unless renewed.¹¹ Unless restricted, the license entitles Defendant to practice as a registered nurse in the State of California and gives her the opportunity to engage in the activities which form the basis of the criminal complaint.

SYNOPSIS

On or about May 30, 2008, a felony complaint was filed in the Los Angeles

1. See License Certification, attached herein as Exhibit "A."

1 County Superior Court, charging Defendant with 12 counts of violating Health and Safety Code
2 section 11173, subdivision (a) (obtaining controlled substances by fraud). Subdivision (a) of
3 section 11173 states, "No person shall obtain or attempt to obtain controlled substances, or
4 procure or attempt to procure the administration of or prescription for controlled substances, (1)
5 by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."^{2/}

6 This charge apparently arises out of two investigations and the two April 29, 2008
7 investigative reports conducted by the California Division of Investigation on the Board's
8 behalf.^{3/} The investigations were conducted after the Board received a complaint from St.
9 Francis Medical Center and a separate complaint from St. Vincent Medical Center alleging that
10 Defendant diverted drugs while working as a registry nurse at both St. Francis and St. Vincent.
11 Medical records from St. Francis indicated that there was drug diversion during a time period
12 beginning on January 22, 2006 and through March 6, 2006. (Exh. "C.") Medical records from
13 St. Vincent indicated that there was drug diversion during a time period beginning on March 9,
14 2007 through March 12, 2007. (Exh. "D.") Defendant admitted to diverting and abusing the
15 controlled substance Dilaudid. According to the investigative reports, Defendant also admitted
16 to practicing under the influence of Dilaudid. (Exhs. "C" and "D.")

17 Although Defendant, on April 10, 2008, entered into a Board drug diversion
18 program, she was terminated from the program as a public safety risk due to gross non-
19 compliance and the fact that she did not enter inpatient treatment mandated as part of her
20 diversion program.^{4/} The termination occurred on September 8, 2008. (Exh. "E.")

21 On or about September 23, 2008, an arraignment hearing was held in *People v.*

22
23 2. See certified copy of the criminal court docket in *People v. Delce* (Super. Ct. Los Angeles
24 County, 2008, No. BA3412360), attached herein as "B."

25 3. See Investigation Reports attached herein as Exhibit "C" and Exhibit "D." Exhibit "C"
26 pertains to the St. Francis Medical Center investigation, and Exhibit "D" pertains to the St.
27 Vincent Medical Center investigation.

28 4. See two Board forms dated September 15, 2008, the first entitled "Complaint Transmittal
Form - Diversion to Enforcement" and the second with no title but with Complaint No. 2006-
1165, attached herein as Exhibit "E."

1 *Delce* (Super. Ct. Los Angeles County, 2008, No. BA341236), and Defendant pleaded not guilty
2 to all counts. Bail was set for \$240,000, and on September 30 the criminal court ordered
3 Defendant conditionally released for transport to Covenant House, with conditions including that
4 Defendant not leave Covenant House except to appear in court. A preliminary hearing was
5 initially set for October 3, continued to October 8 and then to October 14. (Exh. "B.")

6 7 POINTS AND AUTHORITIES

8 I.

9 A STATE LICENSING AGENCY MAY VOLUNTARILY APPEAR IN 10 ANY CRIMINAL PROCEEDING REGARDING A LICENSEE TO MAKE 11 RECOMMENDATIONS FOR SPECIFIC CONDITIONS OF O.R., BAIL 12 OR PROBATION IN THE INTEREST OF JUSTICE AND PUBLIC 13 PROTECTION

14 Penal Code section 23 specifically authorizes a state licensing agency to appear
15 and make recommendations in criminal proceedings, which may have the effect of precluding a
16 licensee from engaging in the activities regulated by the state licensing agency.

17 Penal Code section 23 specifically provides:

18 "In any criminal proceeding against a person
19 who has been issued a license to engage in a business
20 or profession by a state agency pursuant to provisions
21 of the Business and Professions Code . . . , the state
22 agency which issued the license may voluntarily
23 appear to furnish pertinent information, make
24 recommendations regarding specific conditions of
25 probation, or provide any other assistance necessary to
26 promote the interests of justice and protect the
27 interests of the public, or may be ordered by the court
28 to do so, if the crime charged is substantially related
to the qualifications, functions, or duties of a
licensee."

29 Penal Code section 23 is a liberally designed statute adopted by the Legislature to
30 allow state licensing agencies to join with local law enforcement agencies in criminal
31 proceedings for prompt public protection by seeking restrictions of the license pending final
32 resolution of the criminal or administrative proceedings.

33 Penal Code section 23 recognizes that state licensing agencies, such as the Board,

1 have a compelling interest in cases arising out of crimes committed by individual licensees. It
2 further recognizes that these agencies have a special expertise in the professions they regulate,
3 and they are in a unique position to assist the Court in upholding its responsibility to protect the
4 public.

5 In a recent recognition of a board's ability to request a court to impose restrictions
6 on a defendant's license, *Gray v. Superior Court* (2005) 125 Cal. App. 4th 629, the Court of
7 Appeal stressed the need for the restrictions to be reasonable and comport with due process.

8 The Board's capacity to protect the public is wholly dependant on its ability to
9 conduct inspections of individuals and establishments engaging in licensed activity. Defendant's
10 outrageous conduct precludes the Board from ensuring that she is in compliance with the relevant
11 rules and regulations. Accordingly, the unrestricted practice as a registered nurse by Defendant
12 poses an imminent danger to the public's health and safety. An order suspending Defendant
13 from the practice as a registered nurse is necessary to protect the public interest.

14 Typically, a state agency disciplinary action through the administrative hearing
15 process may take months or even years to resolve. Several months may be spent investigating,
16 pleading, calendaring, hearing, and reviewing the administrative adjudication. The additional
17 time it takes to resolve such action by the Board exposes the public to continued harm by the
18 licensee. Such threat of continued harm to the public can be avoided by imposing the requested
19 conditions, as a condition of bail, or O.R., that Defendant be prohibited from practicing as a
20 registered nurse pending disciplinary proceedings to be initiated by the Board. Given the
21 foregoing allegations that Defendant diverted controlled substances for her own use, it is crucial
22 that Defendant be precluded from practicing as a registered nurse pending anticipated
23 administrative action.

24 This Court should prohibit Defendant from practicing as a registered nurse until
25 the effective date of any disciplinary action the Board takes against Defendant based on the
26 misconduct alleged in the misdemeanor complaint.

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II.

**THE COURT HAS AUTHORITY TO IMPOSE ENTER AN ORDER
PROHIBITING DEFENDANT FROM ENGAGING IN ANY VOCATIONAL OR
PROFESSIONAL OCCUPATION**

The court in a criminal proceeding has broad discretion to issue an order prohibiting a person from engaging in any activity or requiring a person to submit to certain activity. (*In re York* (1995) 9 Cal. 4th 1133, 1141-1145; questioned on another ground in *United States v. Scott* (2006) 450 F.3d 863, 865, fn. 1.) In *York*, the California Supreme Court concluded that a court “has the authority, in granting OR release, to require a defendant to promise to comply with *all* ‘reasonable conditions’-- and not simply with those intended to assure the defendant’s appearance at future court proceedings. . . .” (Italics in original.) The conditions need not be related to ensuring an accused’s future appearance in court; conditions are reasonable as long as they “clearly relate to the prevention and detection of further crime and thus to the safety of the public.” (*Id.* at p. 1145.)

Moreover, it is a well-established principle that a court in a criminal proceeding has the discretion to prohibit a person from engaging in an occupation or profession, if such preclusion relates to the crime for which the defendant was charged or convicted. (*People v. Frank* (1949) 94 Cal. App. 2d 740, 741-742 [probation condition that defendant, a licensed pediatrician, not practice medicine during an entire five-year probation period held valid where defendant charged and found guilty of committing a lewd and lascivious act upon a 10-year-old girl while treating her as a patient]; see also *People v. Keefer* (1973) 35 Cal. App.3d 156, 168-169 [upholding probation condition that defendant not engage in the furnace or heating business during probation period where crimes committed in course of business].)

Similarly, Penal Code section 1275, amended in 1987, governing the setting of bail, not only requires the court to “take into consideration the protection of the public,” but specifically states, “*public safety shall be the primary consideration.*” (Italics added.)

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III.

**THE BOARD'S REQUEST FOR A PRETRIAL PROHIBITION OF A
LICENSEE'S PRACTICE PENDING CRIMINAL OR ANTICIPATED
ADMINISTRATIVE DISCIPLINARY PROCEEDINGS IS CONSISTENT WITH
THE BOARD'S PUBLIC PROTECTION RESPONSIBILITIES**

Prohibiting the practice as a registered nurse pending resolution of criminal proceedings or anticipated disciplinary proceedings against the Board's licensees is consistent with the Board's public protection responsibilities. (Bus. & Prof. Code, § 2708.1; see also *Excelsior College v. Board of Registered Nursing* (2006) 136 Cal.App.4th 1218, 1225.) In fact, the Legislature has clearly expressed its intent that "[p]rotection of the public shall be the highest priority for the Board of Registered Nursing in exercising its licensing, regulatory and disciplinary functions." (Bus. & Prof. Code, § 2708.1) The Board's Disciplinary Guidelines generally provide that the minimum discipline for violation of Business and Professions Code section 2762, subdivision (a) (illegally obtaining controlled substances) is revocation.^{5/} Similarly, the Board's Disciplinary Guidelines generally provide that the minimum discipline for violation of Business and Professions Code section 2762, subdivision (b) (use of controlled substances) is also revocation. (Exh. "F.")

Unless restricted, Defendant's license entitles her to practice as a registered nurse without regard to the Board's rules and regulations intended to protect the public health and safety. Given Defendant's failure to successfully complete the Board's drug diversion program partly because Defendant had a recent substance abuse relapse and partly because she did not comply with the program's requirement to undergo inpatient treatment, it is especially important for the court to exercise its authority under Penal Code section 23 to protect the public's interests in ordering that Defendant be prohibited from practicing registered nursing, an occupation that by its nature gives Defendant access to controlled substances. The public protection purposes of Penal Code section 23, authorizing a state licensing agency to appear in a criminal proceeding of one of its licensees, warrants the Board's request to formally appear and advise the Court to

5. See excerpts from the Board's Recommended Guidelines for Disciplinary Orders and Conditions of Probations (referred to as Disciplinary Guidelines), attached herein as Exhibit "F."

1 make certain orders pertaining to the defendant's licensed activity. The criminal court has broad
2 discretion to impose reasonable restrictions of probation or bail as set forth below.

3 The Board serves the public by protecting the health and safety of Californians by
4 advocating a high quality of professionalism, integrity, and honesty on the part of Board
5 licensees. The consuming public rightfully expects licensed registered nurses will abide by the
6 Board's established rules and regulations to ensure their health, safety and welfare. In this case,
7 Defendant has flaunted the Board's regulatory authority and has handcuffed the agency's ability
8 to protect California consumers.

9 Although the Board has civil and administrative remedies it could seek to
10 immediately enjoin or suspend Defendant from practicing as a registered nurse until the Board
11 undertakes disciplinary action, such remedies are cumulative and not exclusive. (*See*, Bus. &
12 Prof. Code, §§ 125.5 [injunctive relief], 494 [interim suspension order].) Typically, a pretrial
13 order prohibiting a licensed practice is preferred and more effective than civil or administrative
14 interim remedies to prevent the licensee from continuing to violate the law pending final
15 adjudication of any disciplinary action.

16 IV.

17 THE 'PRESUMPTION OF INNOCENCE' DOCTRINE APPLIES ONLY AT 18 TRIAL AND MAY NOT BE CONSIDERED IN A PRETRIAL DETERMINATION OF O.R. CONDITIONS OR BAIL

19 "[The presumption of innocence] *has no application to a determination of the*
20 *rights of a pretrial detainee during confinement before his trial has even begun.*" (*In re York*,
21 *supra*, 9 Cal. 4th at p. 1148, quoting *Bell v. Wolfish* (1979) 441 U.S. 520, 533; italics added by
22 *York*.) The Supreme Court in *York* noted that the rule mirrored well-established California law.
23 (*York, supra*, 9 Cal. 4th at p. 1148, citing *Ex parte Duncan* (1879) 53 Cal. 410, 411 [no
24 presumption of innocence attaches to a pretrial determination of the amount of bail to be set]). In
25 making a bail determination, the court must assume that the defendant is guilty of the charges. (*In*
26 *re Horiuchi* (1930) 105 Cal. App. 714, 715.)

27 Consequently, in determining whether this court should impose an interim ban on
28

1 practice as a registered nurse upon Defendant, it should not consider the presumption of
2 innocence applicable only at trial, but rather consider only the issue of whether such condition
3 relates to the prevention or deterrence of further unlawful activity, and thus, public health and
4 safety. (*In re York, supra*, 9 Cal. 4th at pp. 1145, 1147-1148.)

5 **BOARD RECOMMENDATION**


6 For the foregoing reasons and in the furtherance of public health and safety, Ruth
7 Ann Terry, M.P.H., R.N., Executive Officer of the Board of Registered Nursing, respectfully
8 requests that this court issue an immediate Order to prohibit Defendant Tawana La Tecia Delce
9 from engaging in the practice of registered nursing, either directly or indirectly, during the
10 pendency of these criminal proceedings or until the final disposition of anticipated administrative
11 action by the Board.

12 DATED: October 10, 2008

13 Respectfully submitted,

14 EDMUND G. BROWN JR, Attorney General
of the State of California

15 KAREN B. CHAPPELLE
16 Supervising Deputy Attorney General

17 
18 RENE JUKIEWICZ
Deputy Attorney General

19 Attorneys for
20 RUTH ANN TERRY, Executive Officer
California Board of Registered Nursing
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25 DOJ Matter ID: LA2008601291
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